

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
Second Regular Session  
2004

CHAPTER 163

## **HOUSE BILL 2305**

AN ACT

AMENDING SECTION 41-785, ARIZONA REVISED STATUTES; RELATING TO THE STATE  
PERSONNEL BOARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-785, Arizona Revised Statutes, is amended to  
3 read:

4 41-785. Appeals to the personnel board; notice of charges;  
5 hearings

6 A. Any employee who has completed the employee's original probationary  
7 period of service as provided by the personnel rules may appeal to the  
8 personnel board seeking relief from dismissal from state service, suspension  
9 for more than forty working hours or demotion resulting from disciplinary  
10 action. The appeal shall be filed not later than ten working days after the  
11 effective date of such action. The employee shall be furnished with  
12 specified charges in writing when the action is taken. Such appeal shall be  
13 in writing and must state specific facts relating directly to the charges on  
14 which the appeal is based and shall be heard by the personnel board within  
15 thirty days after its receipt. The personnel board shall provide the  
16 employing agency with a copy of the appeal not less than twenty days in  
17 advance of the hearing.

18 B. Hearings on such appeals shall be open to the public, except in  
19 cases where the employee requests a confidential hearing, and shall be  
20 informal with technical rules of evidence not applying to the proceedings  
21 except the rule of privilege recognized by law. Both the employee and the  
22 employing agency shall be notified of any hearing or meeting date not less  
23 than twenty days in advance of the hearing or not less than ten days in  
24 advance of a meeting and may select representatives of their choosing,  
25 present and cross-examine witnesses and give evidence before the personnel  
26 board. The personnel board may appoint a hearing officer to conduct the  
27 hearing and take evidence on behalf of the board and exercise the rights  
28 prescribed by section 12-2212. The personnel board shall prepare an official  
29 record of the hearing, including all testimony recorded manually or by  
30 mechanical device, and exhibits. Either party may request that the record be  
31 transcribed. If a party requests that the record be transcribed, an entity,  
32 other than the personnel board, selected by the requesting party shall  
33 transcribe the record at the cost of the requesting party. If the  
34 disciplinary hearing would involve evidence the state is prevented by law  
35 from disclosing, then a confidential hearing upon the state's request shall  
36 be granted.

37 C. The board may reverse an agency's action on appeal only if the  
38 board finds the action to be arbitrary, capricious or otherwise contrary to  
39 law.

40 D. The board may ~~reduce~~ MODIFY the disciplinary penalty chosen by an  
41 agency only if the board finds the penalty to be ~~excessive~~ DISPROPORTIONATE  
42 TO THE PROVEN OFFENSE IN LIGHT OF MITIGATING CIRCUMSTANCES or made for  
43 reasons that are arbitrary, capricious or otherwise contrary to law.

44 E. Within forty-five days after the conclusion of the hearing, the  
45 board shall enter its decision and shall at the same time send a copy of the

1 decision by certified mail to the employing agency and to the employee at the  
2 employee's address as given at the hearing or to a representative designated  
3 by the employee to receive a copy of the decision.

4 F. Any party may appeal the decision of the board pursuant to title  
5 12, chapter 7, article 6 to the superior court in the employee's county of  
6 residence on one or more of the following grounds,— that the order was:

7 1. Founded on or contained error of law which shall specifically  
8 include error of construction or application of any pertinent rules.

9 2. Unsupported by any evidence as disclosed by the entire record.

10 3. Materially affected by unlawful procedure.

11 4. Based on A violation of any constitutional provision.

12 5. Arbitrary or capricious.

13 G. AN appeal shall be available to the court of appeals from the order  
14 of the superior court pursuant to title 12, chapter 7, article 6 as in other  
15 civil cases.

16 H. An employee may represent himself or designate a representative,  
17 not necessarily an attorney, before any board hearing or any quasi-judicial  
18 hearing held pursuant to this section providing that no fee may be charged  
19 for any services rendered in connection with such hearing by any such  
20 designated representative who is not an attorney admitted to practice.

APPROVED BY THE GOVERNOR APRIL 26, 2004.

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